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Date of Decision: 18.1.1996

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr R J Oza for Mr Y N Oza, Advocate for the petitioner
Mr H J Shah, Advocate for the respondents

CORAM ; N N MATHUR, J.

(January 18, 1996)

ORAL JUDGMENT

By way of this Special Civil Application, the petitioner has challenged the order dated 4.12.1995 passed below Exhibit 37 and order dated 4.1.1996 passed below Exhibit 1 in Election petition No.4/95 pending before the Extra Asstt.Judge, Bharuch. The petitioner and respondent No.1-Mohmed Elias Ahmedkhan Khokhar among others were the candidates for the election to Ward Councillor for Bharuch Nagarpalika held on 20.12.1994 wherein the petitioner was declared elected. This election was challenged by respondent No.1 by way of filing Election Petition, which is pending before the Extra Asst. Judge, Bharuch.

2. So far as the order dated 4.12.1995 is concerned, by the said order the learned Trial Judge has permitted the election petitioner to withdraw the allegations other than Section 14 (5)(a) of the Gujarat Municipalities Act. (for short, 'the Act') It was made clear that the petitioner will not claim any relief as enumerated under clause 14(5)(a) of the Act. The election petitioner was also asked to furnish an undertaking in writing to that effect.

3. Mr R J Oza, learned Advocate appearing for the petitioner challenges this order on the ground that in view of section 14(3)(b) of the Act, the Court cannot allow any alteration or amendment in the pleading unless it is satisfied that such application for compromise or withdrawal is bonafide and not otherwise. Mr Oza submits that no such application has been submitted and in fact, a pursis was submitted and as such in the absence of application and specific averments, the learned Judge has committed error in directing to permit to withdraw the allegations other than under Section 14(5)(b) of the Act.

4. It is true that the pursis is not happily drafted. but this cannot be a ground for interference by this Court under Articles 226 or 227 of the Constitution of India. Mr H J Shah, learned Advocate appearing for the respondent No.1 submits that within a period of one week, he will carry out the necessary amendments in the petition and also fresh undertaking as directed by the trial court. Mr. Oza next submits that the petitioner has not laid down any foundation for the recount and as such the order of the Trial Judge, ex-facie, illegal. He further submits that a reading of the order also does not indicate any substantial reason directing the recount. He further submits that it is established law that recount can be ordered only on a very strong and substantial reason. On the other hand, Mr Shah, learned Advocate for respondent No.1 has read certain paragraphs from the petition and pointed out that there is specific allegation that at the time of counting, the local M.L.A. belonging to BJP was allowed unauthorisedly and he influenced the counting to prejudice the election petitioner. He also submitted that counting agent of respondent No.1 was not allowed to look at the ballot papers and he was kept at a distance and as such it was not possible for the counting agent to actively assist in the counting and watch the interest of the candidates. It is also stated that at the initial stage of counting, respondent No.1 secured 1689 votes whereas the present petitioner had secured 1668 votes. However, at the instance of the writ petitioner, the recount was done. On the recount, certain ballot papers which were not signed by the polling officers and which were otherwise invalid were

also taken into consideration. As a result, the writ petitioner was declared elected. Mr Shah submits that these are the sufficient reasons which were called for a recount.

5. I have considered the rival contentions of the parties. In my view, the three reasons enumerated above sufficiently lay foundation for the recount, more particularly, in the facts of the case, when there is only a difference of one vote and that too as a result of recount before the Election Officer. Considering the above facts of the case, I am not inclined to interfere with the order of the Extra Asstt. Judge, Bharuch dated 4.1.1996. In this view of the matter, there is no merit in this petition and the same is rejected accordingly.

6. At this stage, Mr R J Oza, learned Advocate for the petitioner submits that as this Court has allowed respondent No.1 to carry out the order dated 4.12.1995 by way of furnishing undertaking and carrying out necessary amendments, the order dated 4.1.1996 may be stayed till then. Suffice it to say that as stated above, the order dated 4.12.1995 has no bearing on the order dated 4.1.1996. Hence this prayer of Mr Oza is declined.

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